IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.308 of 2006
In
Criminal Application No.1262 of 2006

Shyansunder Ratilal Mehta Applicant
Vs.
Vijaysingh Prataprao Pawar & ors. Respondents

Mr.Sanjay Bhatia for applicant.
Mr.S.M.Mirajkar with Mr.K.Y.Mandlik for Resp.nos.1 & 2.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 24, 2007.

P.C.

. Heard. This is an application praying for exemption from appearing in Complaints STC No.4574/2003 and STC No.4575/2003 filed before the learned Judicial Magistrate, First Class at Pandharpur. The affidavit-in-reply filed by the respondent nos.1 and 2 states that the applicant is absconding and warrant was issued against him. He approached this Court in Criminal Writ Petition No.1956 of 2006 for cancellation of warrant and the said warrant was stayed for a period of three weeks on 16/10/2006 by directing the applicant to appear before the learned JMFC, Pandharpur and apply for cancellation of warrant but the applicant did not

obey the order passed by this Court and he did not appear before the learned Magistrate. It was under these circumstances when the police were also not successful in executing the warrant, the applicant came to be declared as absconding.

. The applicant has stated that he being an old person and suffering from some ailments, he should be exempted from appearance. This Court has held that so long as the accused appears through an Advocate and also empowers the said learned Advocate to proceed with the trial of the case even till the stage of recording the statement under Section 313 of Cr.P.C. in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881, the appearance of the accused is not necessary before the trial Court and the complaint need not be dismissed or decided on that ground. It is the choice of the accused to step in the witness box in support of his defence or in the alternative to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881 by cross-examining the complainant. If the applicant, therefore, applies for exemption from appearance before the trial Court and if he is being represented through an Advocate

with an express authority to proceed with the trial, the trial Court can consider the applicant's request for exemption. Such application has not been made by the applicant before the trial Court.

. Hence the application is rejected with liberty to the applicant to approach the trial Court for exemption from appearance.

(B.H.MARL